



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. 0-4064

Re: Whether the penalties provided
in Articles 7074 and 7075, Re-
vised Civil Statutes, 1925,
apply to violations of Article
XVI, House Bill No. 8, Forty-
seventh Legislature.

We acknowledge receipt of your request for an opinion
on whether or not the penalties provided in Articles 7074 and
7075, Revised Civil Statutes, 1925, will apply in addition to
the penalties set out in Article XVI, Section 3, House Bill
No. 8, Forty-seventh Legislature, Regular Session.

Section 3 of Article XVI, supra, is as follows:

"If any person shall violate any provision of
this Article, he shall forfeit to the State of Texas,
as a penalty, the sum of not less than \$25.00, and
not more than \$500.00 for each violation, and each
day's violation shall constitute a separate offense,
and in addition thereto delinquent taxes shall draw
a penalty equal to 1% per month from the due date.
..."

Article 7074, Revised Civil Statutes, 1925, provides
as follows:

"Any person, company, corporation or associa-
tion, or any receiver or receivers, failing to make
report for thirty days from the date when said report
is required by this Chapter to be made, shall forfeit
and pay to the State of Texas a penalty of not ex-
ceeding One Thousand Dollars."

Hon. Geo. H. Sheppard, page 2

And Article 7075, Revised Civil Statutes, 1925, reads as follows:

"Any person, company, corporation or association, or any receiver or receivers, failing to pay any tax for thirty days from the date when said tax is required by this Chapter to be paid, shall forfeit and pay to the State of Texas a penalty of 10% on the amount of said tax."

Articles 7074 and 7075, supra, were a part of the Acts of the Thirtieth Legislature, First Called Session, 1907, page 479, providing for the levying and collecting of an occupation tax on various occupations, and these articles were the penalty provisions of such enactment.

Articles 7074 and 7075, supra, are a part of what is known as Chapter 2, Title 122 of the Revised Civil Statutes of Texas, 1925, and Article XVI, supra, shows upon its face to be an amendment to Chapter 2, Title 122, supra, "by adding" certain sections including Section 3, supra. The title to House Bill 8, supra, also provides that it contains "an Article XVI, an addition to Chapter 2, Title 122, Revised Civil Statutes, 1925."

Section 3 of Article XVI, supra, states expressly that the penalties therein provided are for violations of "this article." The Legislature in passing said Bill stated in unequivocal words that such penalty was to be for violation of Article XVI, of House Bill No. 8, and no other.

As above stated, Articles 7074 and 7075, supra, are general provisions for penalties to be paid for the failure to make the returns and payment of taxes when due under Chapter 2, Title 122, supra; and as also above stated, Section 3 of Article XVI, House Bill 8, supra, provides for a penalty for the violation of said Article XVI. Section 3, Article XVI, supra, is a special penalty provision limited only to said Article XVI.

The Supreme Court, speaking through Chief Justice Willie in the case of *Perez vs. Perez*, 89 Tex. 322, said:

"The general rule is that when the law makes a general provision, apparently for all cases, and a special provision for a particular class, the

Hon. Geo. H. Sheppard, page 3

general must yield to the special clause, so far as the particular class is concerned."

In view of the fact that Section 3 of Article XVI, supra, is limited to violations of said Article XVI, and in view of the fact that Articles 7074 and 7075, supra, are penalty statutes which are general in nature, we are of the opinion that the penalties set forth in said Articles 7074 and 7075 will not apply to violations of Article XVI of House Bill 8 of the Forty-seventh Legislature.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Richard H. Cooke
Richard H. Cooke
Assistant

APPROVED OCT 10, 1941

George W. Allen
FIRST ASSISTANT
ATTORNEY GENERAL

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